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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/451,580 11/30/99 POOLE

D 3339-PA13

QM12/0323  
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EXAMINER

BERRY, W

ART UNIT	PAPER NUMBER
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3723

DATE MAILED:

03/23/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

## Office Action Summary

Application No.  
09/451,580

Applicant(s)

Poole et al.

Examiner  
Willie Berry, Jr.

Group Art Unit  
3723



Responsive to communication(s) filed on Dec 27, 2000

This action is FINAL.

Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

### Disposition of Claims

Claim(s) 1, 2, 4-6, 8-11, 13-15, and 17-40 is/are pending in the application.

Of the above, claim(s) 22-29 is/are withdrawn from consideration.

Claim(s) 30-33, 39, and 40 is/are allowed.

Claim(s) 1, 2, 4-6, 8-11, 13-15, 17, 18, 20, 21, and 34-38 is/are rejected.

Claim(s) 19 is/are objected to.

Claims \_\_\_\_\_ are subject to restriction or election requirement.

### Application Papers

See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

The proposed drawing correction, filed on \_\_\_\_\_ is  approved  disapproved.

The specification is objected to by the Examiner.

The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. § 119

Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

All  Some\*  None of the CERTIFIED copies of the priority documents have been

received.

received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_.

Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

### Attachment(s)

Notice of References Cited, PTO-892

Information Disclosure Statement(s), PTO-1449, Paper No(s). 6

Interview Summary, PTO-413

Notice of Draftsperson's Patent Drawing Review, PTO-948

Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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## **DETAILED ACTION**

1. The indicated allowability of claims 7, 12, and 16 is withdrawn in view of the newly discovered reference(s) to Wolff et al. Rejections based on the newly cited reference(s) follow.

### *Election/Restriction*

2. Newly submitted claims 22-29 are directed to an invention that is independent or distinct from the invention originally claimed.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 22-29 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

### *Claim Rejections - 35 USC § 102*

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 2, 4, 18, 20, and 21 are rejected under 35 U.S.C. 102(b) as being anticipated by Sarvie.

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Sarvie discloses a clamp device comprising first and second members (22 and 23), a pivot pivotally coupling (24), an arcuate clamp bar (25), break lever (39), notch (26), and locking assembly (50-52).

*Claim Rejections - 35 USC § 103*

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 5, 6, 8-11, 13-15, 17, and 34-38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sarvie in view of Wolff et al.

Sarvie discloses as discussed above.

Sarvie does not disclose biased jaws and handles.

Wolff discloses biased jaws and handles provided by spring (5) for the purpose of providing tension in the pliers.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified Sarvie to include the biased jaws and handles as taught by Wolff for the purpose of providing tension in the pliers.

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*Allowable Subject Matter*

7. Claims 30-33, 39, and 40 are allowed.
8. Claim 19 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

*Response to Arguments*

9. Applicant's arguments filed 12/27/00 have been fully considered but they are not persuasive. Applicant argues that Sarvie does not disclose a notch extending from an outer surface of the handle portion of the second member at least partially into the handle portion of the second member. The examiner disagrees because Sarvie discloses the limitation with element (26) shown in the drawings.
10. Applicant's arguments with respect to claims 10-17 have been considered but are moot in view of the new ground(s) of rejection.

*Conclusion*

Any inquiry concerning this communication from the examiner should be directed to Willie Berry whose telephone number is (703) 308-7467.

*WB*  
Willie Berry, Jr. :wbj  
March 22, 2001

*J. V. Eley*  
Timothy V. Eley  
Primary Examiner